

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

STOCKTON UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2016050726

ORDER DETERMINING DUE
PROCESS COMPLAINT
INSUFFICIENT; ORDER DENYING
WITHOUT PREJUDICE MOTION TO
RESET TIMELINES AND MOTION TO
DISMISS AS MOOT

On May 6, 2016, Parent on behalf of Student filed a request for a due process hearing¹ (complaint) with the Office of Administrative Hearings naming the Stockton Unified School District. On May 27, 2016, Stockton filed a single pleading containing three motions: 1) A motion to reset the timelines for the due process proceedings in this case based upon Student's failure to serve Stockton with a copy of his complaint; 2) A motion to dismiss the complaint based upon lack of jurisdiction over the issues raised; and, 3) A notice of insufficiency as to the complaint.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint. (20 U.S.C. § 1415(b) & (c).) The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of title 20 United States Code section 1415(b)(7)(A).

Timeliness of the Notice of Insufficiency

The complaint is deemed sufficient unless a party notifies the Office of Administrative Hearings and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements. (20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).)

Here, although Student filed his complaint with OAH on May 6, 2016, Stockton has provided evidence through the declaration of its Director of Special Education, that it did not

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 U.S.C. section 1415(b)(7)(A).

receive a copy of the complaint until provided with a copy by OAH on May 23, 2016. Student did not serve District with a copy at the time he filed his complaint. The fax cover sheet of the complaint filed with OAH states that the same fax would be sent to Stockton. However, that did not occur.

Since Stockton did not receive a copy of Student's complaint until May 23, 2016, it was not able to file a notice of insufficiency as to Student's complaint within 15 days of May 6, 2016. Stockton filed its notice of insufficiency on May 27, 2016, well within 15 days of having received the complaint on May 23. Stockton's notice of insufficiency is therefore timely.

Standards for a Notice of Insufficiency

A complaint is sufficient if it contains: (1) a description of the nature of the problem of the child relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child; (2) facts relating to the problem; and (3) a proposed resolution of the problem to the extent known and available to the party at the time. (20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).) These requirements prevent vague and confusing complaints, and promote fairness by providing the named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation. (See H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.)

The complaint provides enough information when it provides "an awareness and understanding of the issues forming the basis of the complaint." (Sen. Rep. No. 108-185, *supra*, at p. 34.) The pleading requirements should be liberally construed in light of the broad remedial purposes of the IDEA and the relative informality of the due process hearings it authorizes. (*Alexandra R. ex rel. Burke v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, CIV. 06-CV-0215-JL) 2009 WL 2957991 [nonpub. opn.]; *Escambia County Bd. of Educ. v. Benton* (S.D. Ala. 2005) 406 F.Supp.2d 1248, 1259-1260; *Sammons v. Polk County School Bd.* (M.D. Fla., Oct. 28, 2005, 8:04CV2657T24EAJ) 2005 WL 2850076 [nonpub. opn.]; but cf. *M.S.-G v. Lenape Regional High School Dist. Bd. of Educ.* (3d Cir. 2009) 306 Fed.Appx. 772, 775 [nonpub. opn.].) Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge. (*Assistance to States for the Educ. of Children with Disabilities & Preschool Grants for Children with Disabilities* (Aug. 14, 2006) 71 FR 46,540-46,541, 46,699.)

DISCUSSION

Issues Raised by Student

Student's complaint raises seven issues against Stockton, which are all insufficiently pled. In issue one, Student contends that his parent constantly receives calls from Student's

school to pick him up. In issue two, Student states that he is “not allowed to have his recess” and is required “to take his lunch in the office.” In issue three, Student states he is “blamed” for incidents and that his parent is not timely notified of the incidents. In issue four, Student states that he is “picked on by his peers” because of his word pronunciation, and that his school has not addressed the incidents. In issue five, Student states that he takes tests by himself and is denied the “opportunity to take [tests] with his peers.” In issue six, Student states that he struggles with transitions and becomes frustrated because the school does not inform him of changes that will be occurring. Finally, in issue seven, Student states that he gets “pulled out of class” by a “campus monitor” without explanation, which Student’s parent believes is causing Student to feel “upset.” (Quotations marks are indicated as found in Student’s complaint.)

Student does not state any facts in his complaint explaining the circumstances of each issue he raises. He does not state when each action occurred or who specifically engaged in the contact alleged. Most significant is the fact that Student fails to state how any of the alleged actions or circumstances relate to the provision to him of special education and/or related services. Student fails to state how or why the alleged circumstances, if they occurred, constitute a denial to him of a free appropriate public education. For these reasons, Student’s complaint is insufficient as presently worded, because it fails to give Stockton the required notice of the description of the problems and the facts relating to the problems so that Stockton can respond to the allegations, participate in resolution and mediation sessions, and defend itself at a hearing if necessary.

Student’s Proposed Resolution

Stockton also contends that Student’s proposed resolution is not sufficient as presently worded. A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (20 U.S.C. §1415(b)(7)(A)(ii)(IV).) Student’s proposed resolution is that if he is going to be placed in a different school, he will need transportation from home to school. Although the proposed resolution is not well-defined or even connected to the allegations raised in the complaint, Student has met the statutorily required standard of stating a resolution to the extent known and available to him at the time of the filing of the complaint.

Mediator Assistance for Non-Represented Parents

A parent who is not represented by an attorney may request that OAH provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint. (Ed. Code, § 56505.) Student’s parent is encouraged to contact OAH for assistance if she intends to amend the due process hearing request.

Stockton’s Motion to Reset Timelines and Motion to Dismiss

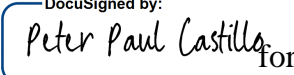
Since this order finds Student’s entire complaint insufficient, all dates presently scheduled will be ordered vacated. Therefore, Stockton’s motion to reset timelines is moot.

Stockton alleges that the issues raised by Student are not within OAH's jurisdiction because the complaint does not state any facts explaining how the issues relate to procedural or substantive violations of special education law. The arguments Stockton advances in support of its motion to dismiss are almost identical to those it raises in its notice of insufficiency. Since this order finds Student's insufficient in its entirety, Stockton's motion to dismiss is also moot.

ORDER

1. Student's complaint is insufficiently pled under title 20 United States Code 1415(c)(2)(D).
2. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).²
3. The amended complaint shall comply with the requirements of title 20 U.S.C. section 1415(b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order.
4. If Student fails to file a timely amended complaint, the complaint will be dismissed.
5. All dates previously set in this matter are vacated.
6. Stockton's motions to reset timelines and motion to dismiss are denied without prejudice as moot.

DATE: June 1, 2016

DocuSigned by:

for
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DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings

² The filing of an amended complaint will restart the applicable timelines for a due process hearing.